

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE  
OF THE  
JUDICIAL CONFERENCE OF THE UNITED STATES  
WASHINGTON, D. C. 20544

TO THE COMMITTEE ON RULES OF PRACTICE AND PROCEDURE:

On behalf of the Advisory Committee on Criminal Rules, I transmit herewith proposals to amend Rules 6(a) and 30 of the Federal Rules of Criminal Procedure. These proposed amendments were circulated to the bench and bar in August, 1983. Public hearings were held in Washington, D. C. and San Francisco, California on February 14, 1984.

I. PROPOSALS RECOMMENDED FOR APPROVAL

Rule 6(a)

The amendment to Rule 6(a) would add a paragraph covering impanelling of alternate grand jurors. Several comments from the bar were received, and all were supportive of the proposed amendment. These included comments by the American College of Trial Lawyers, the California Bar Federal Courts Committee, the Wisconsin Judicial Council and the Los Angeles County Bar Association. Although other organizations—the ABA Criminal Justice Section, the Federal Bar Association Litigation Section, and Division 18 (Litigation) of the District of Columbia Bar—also approved the change, they expressed some concern over bringing new jurors into an ongoing investigation. In light of the case law holding that it is not absolutely necessary for all jurors joining in an indictment to have been present and to have heard all of the evidence—e.g., United States v. Leverage Funding Systems, Inc., 637 F.2d 645 (9th Cir. 1980)—the Advisory Committee saw no need to add complicated procedures to the rule. It is well established that the judge who impanels an alternate may direct that the juror be informed of relevant material previously presented to the grand jury.

The Advisory Committee originally decided that the proposed amendment to Rule 6 was not necessary, but upon reconsideration determined that it might be useful in some districts. In light of the strong public support for the proposed amendment, the Advisory Committee forwarded it to the Standing Committee in June, 1985. Recirculation was deemed unnecessary, since no change in the amendment was made following the 1983 public circulation.

Rule 30

As circulated to the bar, the amendment to Rule 30 provided that the judge may instruct the jury before or after argument. The proposed change received strong public support from the ABA Criminal Justice Section, the California Bar Federal Courts Committee, the Wisconsin

Judicial Council, the Federal Bar Association, the Federal Litigation Section, the Conference of Chief Justices, the Los Angeles Bar Association, and the Illinois State Bar Association.

There was some opposition expressed by the New York Legal Aid Society, the Association of the Bar of the City of New York Committees on Federal Courts and Criminal Law, and the American College of Trial Lawyers. The Legal Aid Society expressed concern about lack of uniformity in federal courts, and all three groups indicated that they worried about the prosecutor abusing the opportunity to have the last word if the trial judge instructs before argument.

As approved by the Advisory Committee and sent to the Standing Committee, the amendment to Rule 30 permits the judge to instruct before argument, after argument, or at both times. The Advisory Committee believes that the discretion given to the judge to instruct at both times resolves the major problem identified by the few groups who opposed the rule. The Advisory Committee did not believe that giving the trial judge flexibility unduly interfered with the desired uniform handling of federal criminal cases. Rather, the flexibility increases the trial judge's ability to adequately inform a jury of the law it must use in deciding a case.

Although the amendment approved by the Advisory Committee makes a small change (permitting instruction both before and after argument) in the language circulated for public comment, the Committee does not believe that recirculation is needed. The small change actually responds to other public comments that were received in opposition to the amendment. Moreover, Federal Rule of Civil Procedure 51 as subsequently circulated for comment, and the Civil and Criminal Rules Committees have had the benefit of two sets of reactions to amendments that address the timing of instructions. The Advisory Committee is confident that the bench and bar have had substantial opportunity for comment, and the comments received indicate broad support for the amendment.

## II. STYLISTIC CHANGES

The Advisory Committee was requested to remove gender-specific language from the Criminal Rules. These proposed amendments do not effect substantive changes and are accompanied by Committee Notes explaining their purpose and intent.

Respectfully submitted,

Leland C. Nielsen  
Chairman, Advisory Committee  
on Criminal Rules

July 31, 1986